



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF MIROSLAW ORZECZOWSKI v. POLAND

(Application no. 13526/07)

JUDGMENT

STRASBOURG

13 January 2009

FINAL

13/04/2009

This judgment may be subject to editorial revision.

In the case of Mirosław Orzechowski v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Giovanni Bonello,

Ljiljana Mijović,

Ján Šikuta,

Mihai Poalelungi,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 9 December 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 13526/07) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Polish national, Mr Mirosław Orzechowski (“the applicant”), on 19 March 2007.

2. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. On 14 January 2008 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Szydłowiec.

5. On 7 June 2005 the applicant lodged a civil claim for compensation against the court’s bailiff and the Przysucha District Court. Subsequently, the case was transferred to the Radom District Court (*Sąd Rejonowy*).

6. On 1 January 2006 the Radom District Court exempted the applicant from court fees. The court considered that the applicant had substantiated his difficult financial situation. He was unemployed, received no unemployment benefit and thus could not pay court fees.

7. On 31 July 2006 the Radom District Court dismissed the applicant's claim. The applicant lodged an appeal against the judgment.

8. On 9 November 2006 the Radom Regional Court (*Sąd Okręgowy*) dismissed the appeal. On 27 December 2006 the applicant was served with the written reasons for the judgment. He was instructed that he could lodge a cassation appeal (*skarga kasacyjna*), which had to be prepared by a lawyer, with the Supreme Court.

9. On 12 January 2007 the applicant requested the Regional Court to appoint him a legal-aid lawyer who would lodge on his behalf the cassation appeal.

10. On 18 January 2007 the court dismissed the applicant's request for appointment of a legal-aid lawyer. The decision contained no reasons.

11. The applicant appealed against this decision and requested the court to prepare written reasons for it.

12. On 1 February 2007 the Radom Regional Court dismissed the applicant's request to prepare the reasons for the decision of 18 January 2007 and for those reasons to be delivered to him. The decision contains no reasons.

13. The applicant appealed against the decision of 1 February 2007 but on 15 February 2007 the Radom Regional Court rejected the appeal as inadmissible in law.

II. RELEVANT DOMESTIC LAW

14. Article 87¹ of the Code of Civil Proceedings lays down the principle of mandatory assistance of a lawyer in cassation appeal proceedings. Legal provisions concerning compulsory legal representation in cassation appeal proceedings applicable at the material time are set out in paragraphs 27-31 of the Court's judgment in the case of *Laskowska v. Poland*, no. 77765/01, 13 March 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING REFUSAL OF LEGAL AID

15. The applicant complained that the court's refusal, without giving reasons, to grant him legal assistance in connection with filing of the cassation appeal against the Regional Court's judgment of 9 November 2006 had infringed his right to a fair hearing, guaranteed by Article 6 § 1 of the Convention which, in so far as relevant, reads:

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

16. The Government contested that argument.

A. Admissibility

17. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

18. The Court will examine whether the applicant's right of access to a court was respected in the cassation appeal proceedings before the Supreme Court in connection with the refusal to provide him with legal assistance in those proceedings.

19. It firstly notes that Polish law requires that a party to civil proceedings be represented by a lawyer in the preparation of his or her cassation appeal against a judgment given by a second-instance court, and that an appeal drawn up by the party, without legal representation, will be rejected by the court (see paragraph 14 above).

20. The Court reiterates that the requirement that an appellant be represented by a lawyer before the court of cassation cannot in itself be seen as contrary to Article 6, such a requirement being clearly compatible with the characteristics of the Supreme Court as the highest court examining appeals on points of law. This requirement cannot be regarded as imposing on the domestic courts an unqualified obligation to grant free legal assistance to a person wishing to institute cassation proceedings. However, while the manner in which Article 6 is to be applied to courts of appeal or of cassation depends on the special features of the proceedings in question, there can be no doubt that a State which does institute such courts is

required to ensure that persons amenable to the law shall enjoy before them the fundamental guarantees of fair hearing contained in that Article (see *Tabor v. Poland*, no. 12825/02, § 42, 27 June 2006). In discharging that obligation, the State must, moreover, display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (see *R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001).

21. The Court observes that in its decision of 1 January 2006 the Radom District Court found that the applicant's financial situation was such as to justify granting him full exemption from the court fees (see paragraph 7 above). Nevertheless, on 18 January 2007 the court dismissed his request to appoint him a legal-aid lawyer who would lodge on his behalf the cassation appeal. That decision contains no reasons and the court refused to prepare the written reasons for it. In the absence of such grounds it is difficult for the Court to understand the reasons for which the Regional Court considered that in the circumstances of the case the grant of legal aid had not been justified.

22. In conclusion, the Court finds that the denial of legal aid to the applicant in the cassation appeal proceedings, which made it impossible for him to lodge a cassation appeal with the Supreme Court, infringed the very essence of the applicant's right of access to a court. The Court thus sees no ground to depart from its case-law set out in the *Tabor* case, cited above, and finds that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE OUTCOME OF THE PROCEEDINGS

23. The applicant complained that the civil proceedings in his case had been unfair in violation of Article 6 of the Convention. He submitted that his civil action for compensation had been well-founded as the court's bailiff's actions had been illegal and had resulted in his losing his job.

24. However, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references).

25. In the present case the applicant did not allege any particular failure on the part of the relevant courts to respect his right to a fair hearing.

Indeed, his complaints are limited to challenging the result of the proceedings. The Court finds no indication that the impugned proceedings were conducted unfairly.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

27. The applicant claimed 125,000 Polish zlotys (PLN) in respect of pecuniary damage. He did not claim any particular sum in respect of non-pecuniary damage leaving the matter for the Court’s assessment.

28. The Government considered that his claims had been groundless and irrelevant.

29. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant 2,000 euros (EUR) in respect of nonpecuniary-damage.

B. Costs and expenses

30. The applicant did not claim any sum for the costs and expenses incurred before the domestic courts or before the Court.

C. Default interest

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the unreasoned refusal to grant legal aid in the cassation proceedings and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President